Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-223

JAMES A. LANE,

Petitioner,

vs.

MARY A. LANE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

The petitioner, James A. Lane, prays that a Writ of Certiorari issue to review the order of the Supreme Court of Illinois entered May 27, 1976, denying his petition for leave to appeal in Case No. 48305 thereby affirming the decision of the Appellate Court of Illinois, First Judicial District in Case No. 60646.

OPINIONS BELOW.

The Supreme Court of Illinois rendered no opinion. Its order appears at Appendix A. The Appellate Court of Illinois, First Judicial District entered its opinion on December 31, 1975. That opinion appears at Appendix B.

JURISDICTION.

The order of the Supreme Court of Illinois was entered on May 27, 1976. This Petition for a Writ of Certiorari was filed less than 90 days from said date. The jurisdiction of this Court is invoked under Rule 19 of the Rules of the Supreme Corut of the United States and 28 U. S. C. 1257(3) which provide for review of final judgments rendered by the highest court of a state by Writ of Certiorari "where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States." The constitutional issues presented herein were first raised in the trial court and argued and presented thereafter.

QUESTIONS PRESENTED.

The questions presented are:

Whether the enforcement of petitioner's alimony obligation violates the First Amendment of the Constitution of the United States.

Whether the enforcement of petitioner's alimony obligation violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The texts of the pertinent constitutional and statutory provisions involved herein are contained in Appendix C. The pertinent provisions are:

1. The First Amendment of the Constitution of the United States.

2. The Fourteenth Amendment of the Constitution of the United States.

3. Illinois Revised Statutes, Chapter 40, Section 19.

STATEMENT OF FACTS.

The parties to this cause were married on June 6, 1949 and divorced on August 13, 1970. The Decree for Divorce required the petitioner to pay $250.00 per month as alimony to the respondent. By March of 1971, respondent no longer had custody of any of the parties' children.

On November 9, 1973, petitioner filed a Petition before the lower court seeking a termination of his alimony payments. As a partial basis therefore, petitioner alleged that respondent had entered a convent, that as such she was no longer in need of his support, that she transferred all of his alimony payments to her religious order or used same for other religious purposes.

Respondent filed her Amended Answer to the aforesaid Petition on February 7, 1974, stating in relevant part that she was indeed a novice in a convent, that she had not yet taken her vows of poverty, that she voluntarily paid her own dental and medical expenses, that she did not apply the alimony to any religious purpose and that she was not a source of income to the convent.

Discovery commenced and respondent answered certain relevant interrogatories by stating that she had entered the convent in November of 1972 and that she was not free to leave the convent at will.

On April 22, 1974, a hearing was held before the lower court to determine the Petition. At the outset, a stipulation was introduced by both parties containing that which the Mother Superior of respondent's convent would testify to if she were able to appear. The stipulation reads, *inter alia:*

"1. That other Postulants and Novices do pay and are paying at the present time, for their own medical, dental an incidental expenses and it is mandatory for them to do so if they have the funds available.

2. That Mary Lane, at the present time, is paying her medical, dental and all other incidental expenses.

3. That the Order of the Dominican Sisters of the Perpetual Rosary would not exclude or expel any Postulants, Novices or Sisters who did not have the funds to pay for their medical, dental and other incidental expenses."

The only other evidence adduced regarding the situation within the convent was elicited from the respondent herself. She testified that she had entered the order as a postulant, that she had risen to the status of a novice and that it would be several years before she would take her perpetual vows, including the vow of poverty. This latter vow, she stated, would mean that all funds she received would have to be administered by her Mother Superior.

Respondent further noted that living arrangements in the convent, where she resides and takes her meals, were the same for each member regardless of rank. She was then shown the aforesaid stipulation and agreed that her financial status was irrelevant as far as being maintained in the convent.

Upon further questioning, the respondent acknowledged that of the sixteen members of the convent, only she and two others had sources of income outside the church. However, she contended that it was the policy of the order to force members to pay their own medical and incidental expenses if they had the money available. As a basis therefore, she stated that the order was in financial difficulty.

Finally, respondent admitted that other members in need of medical care or incidental necessities had them provided by the convent. When asked specifically if she knew that her Mother Superior had stated that she would not be removed for lack of funds and that all her needs would be met, respondent answered affirmatively.

On May 7, 1974, the lower court entered its order continuing petitioner's alimony obligation. This order read, in relevant part: "(b) . . . it is not unconstitutional, either under Federal or state constitution to order the Defendant to pay alimony to his former wife."

The petitioner timely appealed this order to the Appellate Court of Illinois, First Judicial District. There, he reiterated his two arguments arising under the Constitution of the United States. These were: (1) that the continuation of alimony under these facts forged an impermissible link between church and state; and (2) that he was denied the equal protection of the laws in that Illinois statute and case law mandate a termination of alimony where the recipent remarries or acquires compensation employment.

The Appellate Court disposed of the former argument by stating that alimony is a legal obligation based on the former marital status and donation of the money to the church is not a support of a religious institution by the petitioner. It also opined that the payments did not advance or inhibit religion nor did they constitute an excessive entanglement. The equal protection argument was rejected in the following words:

"Without professing to know exactly what happens to a woman who enters a convent, we think it obvious that postulants, novices and nuns of religious orders constitute a class quite different from that made up of women who enter the labor market and become gainfully employed."

After this determination, petitioner timely filed his Petition for Leave to Appeal to the Supreme Court of Illinois. On May 27, 1974, the Supreme Court of Illinois entered its order denying the Petition, from which order the present Petition for a Writ of Certiorari is taken.

PRESENTATION OF THE FEDERAL QUESTIONS.

The federal questions, namely the alleged violations of the First and Fourteenth Amendments of the Constitution of the United States, were originally raised in the Circuit Court of Cook County, Chancery—Divorce Division. Each question was reraised in both the Appellate Court of Illinois and the Supreme Court of Illinois.

REASONS WHY THE WRIT SHOULD BE GRANTED.

Neither the Circuit Court of Cook County nor the Appellate or Supreme Court of Illinois had the benefit of this Court's decision on *Serbian Eastern Orthodox Diocese, etc.* v. *Milivojevich*, ... U. S. ....., 96 S. Ct. 2372 (1976), in reaching their determinations. There, this Court held as follows:

> "Consistently with the First and Fourteenth Amendments 'civil courts do not inquire whether the relevant (hierarchical) church governing body has power under religious law . . . (to decide such disputes) . . . Such a determination . . . frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a (hierarchical) church so as to decide . . . religious law . . . (governing church policy) . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine.' *Md. and Va. Churches* v. *Sharpsburg Church*, 396 U. S. 367, 369, 90 S. Ct. 499, 500, 24 L. Ed. 2d 582 (1970) (concurring opinion). For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religous issues of doctrine or polity before them." 96 S. Ct. at 2380.

This expression of the function of civil courts in interpreting religious doctrine clearly legitimizes petitioner's constitutional claims herein.

The highest authority within respondent's convent gave evidence that it is the policy of the order to support the requirements of its members. Food and lodging are provided respondent already, and those financial obligations which she meets with the alimony provided by petitioner will be borne for her by the convent as is the case with the majority of its members. Further, the Canons of the Catholic religion, as outlined in

Canon Law, Bouscaren, Ellis and Korth, 4th Ed. (1966), Bruce Pub. Co., Milwaukee, show the degree of authority over which the order exercises control regarding the property of its members. Canon 568 prohibits a novitiate, which is respondent's status, from encumbering or giving up any of her benefices or property, and declares such acts to be not only illicit, but null and void by law. The administration of such property must be ceded to a third party before first profession. Canons 569 and 580 require all novices, even minors, to make a will.

The life of a novice is also carefuly defined. Canon 565 states:

> "The time of novitiate has for its object the forming of the mind . . . by means of study of the rule and constitutions, by pious meditations and assiduous prayer, by instruction on those matters which pertain to the vows and the virtues, by exercises suitable for the rooting out of the germs of vice, for regulating the emotions of the soul . . . besides at least weekly conferences on Christian doctrine."

Thus, the continuing imposition of an alimony obligation upon the petitioner not only interferes with the policy of respondent's order, but forces him to support his ex-wife's "study of the rule and constitutions . . . pious meditation . . . assiduous prayer . . . instructions on vows and virtues . . . exercises suitable for the rooting out of the germs of vice and . . . weekly conferences on Christian doctrine." Further, the distribution of the money which he provides her is under the almost total control of the church.

The most telling portion of the Appellate Court's opinion is the statement that it did not profess to know what happens to a woman in a convent. The Mother Superior and the Canons outline what happens and crystallize the efficacy of the constitutional claims.

Both the establishment and free exercise clauses of the First Amendment protect citizens from the "sponsorship, financial support, and active involvement of the soveirgn in religious activity." *Walz* v. *Tax Commission*, 397 U. S. 664, 668 (1970).

In *Lemon* v. *Kurtzman,* 403 U. S. 602 (1971), this Court invalidated state statutes which granted aid for salaries of those who taught secular subjects in church related schools. Three tests were set out for a law to pass a challenge under the Establishment Clause: (1) the statute must have a secular legislative purpose; (2) the affect of the statute must not advance or inhibit religion; and (3) the statute must not involve excessive entanglement with religion. The statute involved here, *Ill. Rev. Stat.,* Ch. 40, Sec. 19, which authorizes alimony and its modification, while not challenged here as being unconstitutional, has been given an unconstitutional effect by the imposition of alimony in a manner which violates the principles enunciated in (2) and (3) above.

First, it is well-established that a state court order will constitute an erroneous incursion into church and state dichotomy. *Quiner* v. *Quiner,* 59 Cal. Rptr. 503, 251 C. A. 2d 383 (1967); *Lynch* v. *Uhlenhopp,* 248 Iowa 68, 78 N. W. 2d 491 (1956). Second, the order here is an erroneous incursion in that its primary affect is to advance the religious training of respondent and it involves excessive entanglement with religion in that one-sixteenth of a financially trouble convent is being supported by court decree and in that the lifestyle and property of a person controlled by a religious institution have been made possible by petitioner's enforced obligation. Moreover, the Appellate Court's implication that the benefit to the convent is indirect does not mitigate the constitutional violation. It is not necessary to show direct government compulsion in order to maintain a successful claim based on interference with the establishment clause. *Smith* v. *Smith,* 391 F. Supp. 443 (W. D. Va. 1975).

Petitioner's equal protection argument is similarly well-taken. The Equal Protection clause of the Fourteenth Amendment prohibits discrimination against classes of similarly situated persons. *New York State Association for Retarded Chidren, Inc.* v. *Rockefeller,* 357 F. Supp. 752 (E. D. N. Y. 1973). As outlined in *Eisenstadt* v. *Baird,* 405 U. S. 438 (1972), persons

may not be separated into classes for purposes totally unrelated to the object of the statute under which they are classified. According to the Appellate Court of Illinois' decision in this case, *Ill. Rev. Stat.,* Ch. 40, Sec. 19 has as its purpose the support of the divorced spouse. This is a correct analysis and pursuant thereto, the statute specifically mandates the termination of alimony if the recipient spouse remarries. Consistent therewith, Illinois case law calls for modification or termination of alimony when the recipient spouse acquires gainful employment. *Booth* v. *Booth,* 6 Ill. App. 3d 62, 284 N. E. 2d 506 (1972); *Tan* v. *Tan,* 3 Ill. App. 3d 671, 279 N. E. 2d 486 (1972); *Warren* v. *Warren,* 40 Ill. App. 2d 286, 189 N. E. 2d 401 (1963). Petitioner herein is in the same class as alimony obligors whose ex-spouse has either remarried or entered the labor market—his ex-wife is now has total support available to her from a third party. Thus, *the order continuing alimony has separated him into a class totally unrelated to the object of the statute under which he has been classified.*

CONCLUSION.

Petitioner herein is cognizant of the novelty of his situation. However, while the factual setting may be unique, the principles being violated give cause to widespread concern. If a divorced spouse can be forced to finance his ex-wife's religious life, then why not order religious training as an obligation of a custodial parent? If a church supported woman is still eligible for alimony while a secularly supported one is not, then why not create other legal benefits for those pursuing a religious life? Clearly, the implications of the present determination of this case are chilling. The encouragement of religious activity by state action and the discouragement of irrational class distinctions are the subject of long-standing and wisely founded principles. A decision of this nature threatens the strength of those principles.

WHEREFORE, Petitioner respectfully prays that a Writ of Certiorari issue to the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX A.

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield 62706

May 27, 1976

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No. 48305—Mary A. Lane, respondent, vs. James A. Lane, petitioner, Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ CLELL L. WOODS,
Clerk of the Supreme Court.

APPENDIX B.

No. 60646

MARY A. LANE,
Appellee,
vs.
JAMES A. LANE,
Appellant.

Appeal from Circuit Court, Cook County.

Honorable Robert L. Hunter, Presiding.

MR. JUSTICE LEIGHTON delivered the opinion of the court:

This appeal is by a former husband who petitioned for termination of alimony he was paying under the decree that divorced him from his wife. The principal grounds alleged for the termination were his remarriage and the fact that his former wife had entered a convent to become a nun. He contended that payment of alimony to her under these circumstances violated rights secured by our state and federal constitutions. After a hearing, the trial court denied the petition.

Two issues are presented for our review. The first is whether the trial court erred in ruling that there was no change in the circumstances of the parties that required termination of alimony. The second is whether compelling a former husband to pay alimony to his former wife after she enters a convent to become a nun creates an impermissible connection between church and state in violation of the first and fourteenth amendments to the United States Constitution and violates article I, section 18 of the Illinois Constitution of 1970. These issues arise from the following facts.

I.

Mary A. Lane and James A. Lane were married in Waterloo, Iowa on June 6, 1949. They lived as man and wife until about January 12, 1969 when James deserted the marital home in

Park Forest, Illinois. During their life together, three children were born to them: Cheryl, in 1952; Scott Michael, in 1953; Mariann, in 1955. In August 1970 Mary Lane was divorced from her husband; Cheryl was then married, Scott Michael and Mariann were then 15 and 14 years of age, respectively. The terms of the decree provided for payment of child support, assignment and transfer of interests in personal property, child custody and visitation rights, and payment to Mary Lane, by James of $250 per month as alimony. The payments were to be made semimonthly until further order of court; and the amount was based on a determination that James then had a net monthly income of $1,150. The alimony was paid in accordance with the provisions of the decree.

On November 19, 1972, Mary Lane entered a convent in Milwaukee, Wisconsin as a postulant and began a period of formation known as a postulancy of six months; immediately thereafter she began a one year canonical novitiate. Upon learning of this fact, James Lane filed a petition in which he alleged that his former wife had become a nun; that he had paid her a total of $9,750 in alimony; that he had remarried since their divorce; that their youngest daughter was emancipated, maintaining her own apartment; that he needed relief from the alimony provisions of the divorce decree; and that her entry into the convent required her to transfer all monies he paid her to the religious order or some other religious body, making her a remarried woman for all practical purposes, and thus necessitating a termination of alimony.

Mary Lane appeared and filed an answer in which she admitted entering a convent, but denied that she was a nun. She alleged she was a novice who was undergoing a period of formation; that only after she had complied with other requirements would she qualify to take the vows of poverty, chastity and obedience; that in the meantime, she was responsible for her medical, dental, and incidental expenses of about $185.50 each month for which she needed her alimony. In later discovery proceedings, she answered interrogatories and stated that since

her divorce, she received $5000 as proceeds of an inheritance and invested that sum in government bonds.

Thereafter, the cause came for hearing on the petition and answer, as amended. The parties stipulated to the testimony the convent's Mother Superior would give in the cause were she to appear as a witness. Then, the court heard Mary Lane as an adverse witness, James Lane, Lane's second wife and Scott Michael who was then an emancipated young adult living with his father but contributing to a part of his expenses. After admitting the evidence, receiving exhibits, and listening to arguments of counsel, the trial court entered an order in which it found that since entry of the divorce decree, no change of circumstances had occurred which required termination of the alimony payments. It ruled that the provisions of the decree requiring Lane to pay alimony to his former wife after she entered a convent did not violate any constitutional right he had under either the state or federal constitutions. The petition for termination was denied, attorneys fees were awarded Mary Lane and the court determined that its order was final. Accordingly, James Lane appeals and brings to this court the two issues he asks us to resolve.

II.

The first one has been the subject of a long line of decisions by reviewing courts of this state. See *Stillman* v. *Stillman*, 99 Ill. 196; *Hilliard* v. *Anderson*, 197 Ill. 549, 64 N. E. 326; *Lay* v. *Lay*, 204 Ill. App. 511; *Green* v. *Green*, 21 Ill. App. 3d 396, 315 N. E. 2d 324. In the process, the rule has been evolved that modification of alimony provisions of a divorce decree rests in the sound judicial discretion of the trial court, and unless the record shows an abuse of discretion, an order that refuses to modify an obligation to pay alimony will not be disturbed on review. (*Hoover* v. *Hoover*, 307 Ill. App. 590, 30 N. E. 2d 940.) These same courts have said that to justify modification of a divorce decree and terminate the payment of alimony, there must be proof that after the decree, there was a material change

in the condition and circumstances of the parties; it must be shown that such a modification is equitable. *Cole* v. *Cole*, 142 Ill. 19, 31 N. E. 109; *Thomas* v. *Thomas*, 18 Ill. App. 3d 673, 310 N. E. 2d 432; *Gregory* v. *Gregory*, 52 Ill. App. 2d 262, 202 N. E. 2d 139.

In the case before us, the trial court heard evidence which proved that after they were divorced, James Lane paid his former wife $9,750 in alimony; that since the decree, there had been a slight increase in his net income and a corresponding increase in his expenses; that all the children of the parties had become emancipated, one was living with Lane but paying for part of his support; that Lane's second wife contributed $7,000 annually to the family's gross income; that Mary Lane had entered a convent, and was now a novice who was working toward the taking of religious vows; that she had personal needs which totaled about $185.50 each month; and that since the divorce, she received $5,000 from an inheritance and had $500 in a checking account.

In our judgment, these facts did not prove a difference in the material needs of the parties or that the termination of alimony requested by James Lane would have been equitable. See *Bowman* v. *Bowman*, 11 Ill. App. 3d 719, 298 N. E. 2d 339; *Pearlman* v. *Pearlman*, 131 Ill. App. 2d 388, 266 N. E. 2d 388; 24 Am. Jur. 2d Divorce and Separation § 665; Annot., A. L. R. 2d 10. Therefore, the trial court did not err in ruling that there had been no change in the circumstances of the parties that required termination of the alimony payments James Lane was making to his former wife. *Blowitz* v. *Blowitz*, 75 Ill. App. 2d 386, 221 N. E. 2d 160; compare *Loucks* v. *Loucks*, 130 Ill. App. 2d 961, 266 N. E. 2d 924.

III.

The second issue has never been resolved by a reviewing court of this state. In fact, as far as we can ascertain, it has never

been presented to any court in this country. There is novelty in the inquiry whether the constitutional rights of a former husband are infringed by a divorce decree that requires him to pay alimony to his former wife after she enters a convent. Novelty of an issue, however, does not preclude its resolution by resort to principles of statutory and constitutional law that are well established, and with which we are familiar.

To begin with, it is established in our law that alimony is founded on the natural and legal duty of a husband to support his wife. (*Maginnis* v. *Maginnis*, 323 Ill. 113, 153 N. E. 654; see *Gold* v. *Gold*, 17 Ill. App. 3d 11, 308 N. E. 2d 75.) This concept of duty consistent with principles of equality between the sexes, has been enlarged so that "[w]hen a divorce is decreed, the court may make such order touching the alimony and maintenance of the wife or husband * * * or any of them as, from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just * * *." (Ill. Rev. Stat. 1973, ch. 40, par. 19.) Therefore, under our law, either a husband or a wife can be ordered to pay alimony. See *Planters Bank and Trust Co. of Hopkinsville, Ky.* v. *Hite*, 130 Ill. App. 2d 666, 263 N. E. 2d 498; compare *Hursh* v. *Hursh*, 26 Ill. App. 3d 947, 326 N. E. 2d 95. And as is true in most American jurisdictions, a court in our state that decrees the payment of alimony may, from time to time, as shall appear reasonable and proper, make alterations in the provisions with regard to such payments. (*Warren* v. *Warren*, 40 Ill. App. 2d 286, 189 N. E. 2d 401; *MacKinlay* v. *MacKinlay*, 18 Ill. App. 2d 355, 152 N. E. 2d 213 (abst.); see Ill. Rev. Stat. 1973, ch. 40, par. 19.) In this case it was decreed, when the Lanes were divorced, that the former husband was to pay his former wife $250 in monthly alimony, until further order of the court. Therefore, Mary Lane was entitled to the alimony payments until there was an alteration of the decree. *Baker* v. *Baker*, 28 Ill. App. 3d 680, 329 N. E. 2d 408; *Escott* v. *Escott*, 26 Ill. App. 3d 417, 325 N. E. 2d 395; *Dubin* v. *Dubin*, 25 Ill. App. 3d 323, 323 N. E. 2d 152.

In urging that in this case the decree should be altered, James Lane argues that requiring him to pay his former wife alimony after she entered a convent denies him equal protection of the laws in violation of article I, section 18 of the 1970 Illinois Constitution and the equal protection clause of the fourteenth amendment to the United States Constitution. He insists that compelling him to make payments violates his rights under the establishment and free exercise clauses of the first amendment to the United States Constitution because through them he is forced to support the religious order to which his former wife now belongs. Lane's claimed deprivation of equal protection under the state constitution is based on his contention that alimony was being required of him because of his sex, he being a former husband; deprivation under the equal protection clause of the fourteenth amendment is based on his contention that former husbands whose wives enter the labor market and become gainfully employed are relieved of alimony burdens while he is required to continue supporting his former wife even after she enters a convent. Thus, Lane equates a divorced woman's entry into a convent with a woman's entry into the labor market. He points out that under the administration of the religious order into which his former wife had entered, she will be provided with her personal needs and be in the position of a working woman who is able to care for herself.

We consider these arguments unsound. The purpose of the equal protection clause of the 1970 Illinois Constitution is to prohibit discrimination on account of sex. (*People* v. *Ellis*, 57 Ill. 2d 127, 311 N. E. 2d 98; Ill. Const. 1970, art. I, § 18.) As we have already said, the obligation to pay alimony in this state does not depend on sex. See Ill. Rev. Stat. 1973, ch. 40, par. 19; *Planters Bank and Trust Co. of Hopkinsville, Ky.* v. *Hite*, 130 Ill. App. 2d 666, 263 N. E. 2d 498; *Hursh* v. *Hursh*, 26 Ill. App. 3d 947, 326 N. E. 2d 95. For this reason, alimony provisions of a divorce decree do not violate this guarantee of equal protection.

The equal protection clause of the fourteenth amendment prohibits discrimination against classes of similarly situated persons. (*New York State Association for Retarded Children, Inc.* v. *Rockefeller* (E. D. N. Y. 1973), 357 F. Supp. 752.) This clause guarantees that no person or class of persons will be denied the same protection of the laws which in life, liberty and enjoyment of property is enjoyed by similarly situated persons or classes in like circumstances. (*Truax* v. *Corrigan* (1921), 257 U. S. 312, 66 L. Ed. 254, 42 S. Ct. 124; *Purifoy* v. *State Board of Education* (1973), 30 Cal. App. 3d 187, 106 Cal. Rptr. 201.) Without professing to know exactly what happens to a woman who enters a convent, we think it obvious that postulants, novices and nuns of religious orders constitute a class quite different from that made up of women who enter the labor market and become gainfully employed. See Fanfani & O'Rourke, *Canon Law for Religious Women*, 163, 167-68, 12-13 (Priory Press 1961); 23 Encyclopaedia Britannica, Women's Religious Order, 630-632; 66 Am. Jur. 2d Religious Societies §§ 36-42. Therefore, a state rule of law that treats these classes differently does not impose an unconstitutional distinction.

The argument that Lane's continued payment of alimony to his former wife compels him to support a religion in violation of his constitutional rights is refuted by the nature of the payments. Alimony is ordered for the support of the divorced spouse. (*Adler* v. *Adler*, 373 Ill. 361, 26 N. E. 2d 504; *Herrick* v. *Herrick*, 319 Ill. 146, 149 N. E. 820.) By operation of the decree which awarded it and fixed the terms of its payment, Mary Lane becomes entitled to the money as and when it periodically accrues. (*Ellingwood* v. *Ellingwood*, 25 Ill. App. 3d 587, 323 N. E. 2d 571; see *Fox* v. *Coyne*, 25 Ill. App. 2d 352, 166 N. E. 2d 474; *Hallett* v. *Hallett*, 10 Ill. App. 2d 513, 135 N. E. 2d 224.) Thus, periodic payment by James Lane discharges his fixed legal obligation to his former wife. See *Shapiro* v. *Shapiro*, 113 Ill. App. 2d 374, 252 N. E. 2d

93. If, after receiving a payment, she pays or donates the money to the convent in whole or in part, as in this case, for the necessities of life, her act would not be a support of the religious order by her former husband. The use of alimony in this manner would not convert into a religious purpose the secular one that was intended when the alimony provisions were incorporated into the decree, compare *Epperson* v. *Arkansas* (1968), 393 U. S. 97, 21 L. Ed. 2d 228, 89 S. Ct. 266; nor would payment or donation of the alimony payments advance or inhibit religion, compare *McGowan* v. *Maryland* (1961), 366 U. S. 420, 6 L. Ed. 2d 393, 81 S. Ct. 1101; nor would their use, even within the convent, involve excessive government entanglement with religion, compare *Walz* v. *Tax Commission* (1970), 397 U. S. 664, 25 L. Ed. 2d 697, 90 S. Ct. 1409. Therefore, we conclude that compelling James Lane to pay alimony to his former wife after she entered a convent to become a nun did not deny him equal protection of the laws under either the state or federal constitutions nor create an impermissible connection between church and state in violation of the first amendment to the Constitution of the United States. The judgment is affirmed.

AFFIRMED.

DOWNING, *P. J.*, and STAMOS, *J.*, concur.

APPENDIX C.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. The First Amendment of the constitution of the United States reads:

> "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. The Fourteenth Amendment of the Constitution of the United States reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive of any person of life liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. Illinois Revised Statutes, Chapter 40, Section 19 reads:

> 19. Alimony and maintenance—Custody and support of children—Settlement in lieu of alimony—Security—Modification of decree.] § 18. When a divorce is decreed, the court may make such order touching the alimony and maintenance of the wife or husband, the care, custody and support of the children, or any of them as, from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just and, in all cases, including default cases, the court shall make inquiry with respect to the children of the parties, if any, and shall make such order touching the care, custody, support and education of the minor children of the parties or any of them, as shall be deemed proper and for the benefit of the children. The

> court may order the husband or wife, as the case may be, to pay to the other party such sum of money, or convey to the party such real or personal property, payable or to be conveyed either in gross or by installments as settlement in lieu of alimony, as the court deems equitable.
>
> If alimony, child support or both, is awarded to persons who are recipients of aid under "The Illinois Public Aid Code", approved April 11, 1967, as amended,[1] the court shall direct the husband or wife, as the case may be, to make the payments to (1) the Illinois Department of Public Aid if the persons are recipients under Articles III, IV, or V of the Code,[2] or (2) the local governmental unit responsible for their support if they are receipients under Articles VI or VII of the Code.[3] The order shall permit the Illinois Department of Public Aid or the local governmental unit, as the case may be, to direct that subsequent payments be made directly to the former spouse, the children, or both, or to some person or agency in their behalf, upon removal of the former spouse or children from the public aid rolls; and upon such direction and removal of the receipients from the public aid rolls, the Illinois Department or local governmental unit, as the case requires, shall give written notice of such action to the court.
>
> Irrespective of whether the court has or has not in its decree made an order for the payment of alimony or support it may at any time after the entry of a decree for divorce, upon obtaining jurisdiction of the person of the defendant by service of summons or proper notice, make such order for alimony and maintenance of the spouse and the care and support of the children as, from the evidence and nature of the case, shall be fit, reasonable and just, but no such order subsequent to the decree may be made in any case in which the decree recites that there has been an express waiver of alimony or a money or property settlement in lieu of alimony or where the court by its decree has denied alimony.
>
> In any order entered pursuant to this Section, the court may order the defendant to give reasonable security for such alimony and maintenance or such money or property settlement, or may enforce the payment of such alimony and maintenance or such money or property settlement in

any other manner consistent with the rules and practices of the court, where a party willfully refuses to comply with the court's order to pay alimony and maintenance or to perform such money or property settlement, or has shown himself unworthy of trust. No alimony or separate maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order. A party shall not be entitled to alimony and maintenance after remarriage; but, regardless of remarriage by such party or death of either party, such party shall be entitled to receive the unpaid installments of any settlement in lieu of alimony ordered to be paid or conveyed in the decree.

The court may, on application, from time to time, terminate or make such alterations in the allowance of alimony and maintenance and the care, education, custody and support of the children, as shall appear reasonable and proper. However, after the children have attained majority age, the court has jurisdiction to order payments for their support for educational purposes only.